

ENTERED

April 16, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DONALD R. LENOR,
(TDCJ #1675926)

Plaintiff,

v.

ROCKY MOORE, *et al.*,

Defendants.

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CIVIL ACTION NO. H-17-3286

MEMORANDUM AND ORDER

Donald R. Lenor, a Texas state inmate, filed this lawsuit under 42 U.S.C. § 1983, alleging violations of his civil rights. He is representing himself and has been granted leave to proceed without prepaying the filing fee. Lenor has filed a motion for voluntary dismissal of his complaint. For reasons set forth briefly below, Lenor's motion will be granted.

"[A]s a general rule, motions for voluntary dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit." *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 318 (5th Cir. 2002) (citing *Manshack v. Southwestern Elec. Power Co.*, 915 F.2d 172, 174 (5th Cir. 1990)). If the district court concludes that granting the motion unconditionally will cause plain legal prejudice, it has two options: (1) it can deny the motion outright, or (2) it can craft conditions that will cure the prejudice. *Elbaor*, 279 F.3d at 317–18. However, absent evidence of prejudice to the non-movant, or of abuse by the movant, a court should generally grant the motion. *See id.*

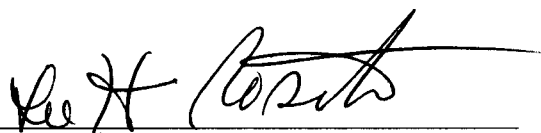
Lenor's complaint remains subject to judicial screening under 28 U.S.C. § 1915A, and the court has not requested an answer from the defendants. Under these circumstances, it does not

appear that the defendants will suffer prejudice as a result of Lenor's request for a voluntary dismissal in this case. Lenor's motion for voluntary dismissal of his complaint, (Docket Entry No. 10), is granted, and the case is dismissed without prejudice.

It is further ordered that the fee collection order entered in this case, (Docket Entry No. 5), is vacated. Inmate Trust Fund officials are instructed that no further withdrawals shall be made from the prison trust fund account of Donald Lenor (TDCJ #1675926) to collect filing fees in this case. Lenor is advised, however, that funds properly withdrawn under the collection order to date will not be refunded.

The Clerk of Court will send a copy of this order to Lenor and will also provide a copy of this order to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas 78711, fax 512-936-2159, and to the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, fax 936-437-4793.

SIGNED on April 13, 2018, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge